

1 Randal R. Leonard, Esq.  
2 Nevada Bar No. 006716  
3 509 South Seventh Street  
4 Las Vegas, NV 89101  
5 (702) 598-3667  
6 Attorney for Debtor(s)

7 **UNITED STATES BANKRUPTCY COURT**

8 **DISTRICT OF NEVADA**

9 In re:

10 Case No.: BK-S-09-23135-BAM

11 Chapter 13

12 RAYMOND MARTINEZ and MARY F.  
13 MARTINEZ

14 **OPPOSITION TO MOTION FOR RELIEF  
15 FROM AUTOMATIC STAY**

16 Debtor(s).

17 Hearing Date: December 1, 2009

18 Hearing Time: 1:30 p.m.

19 COMES NOW Debtor(s), RAYMOND MARTINEZ and MARY F. MARTINEZ by and  
20 through counsel, Randal R. Leonard, Esq., and hereby opposes creditor WELLS FARGO  
21 BANK, N.A.'s Motion for Relief from Automatic Stay. This Opposition is based upon the  
22 pleadings and papers in file herein and the Memorandum of Points and Authorities attached  
23 hereto.

24 Dated this 20th day of November, 2009.

25  
26 /s/ Randal R. Leonard  
27 Randal R. Leonard, Esq.  
28 Nevada Bar No. 006716  
29 509 South Seventh Street  
30 Las Vegas, NV 89101  
31 (702) 598-3667  
32 Attorney for Debtor(s)

## **MEMORANDUM OF POINTS AND AUTHORITIES**

Creditor Wells Fargo Bank, N.A., claims that Debtors are behind post-petition on their Note obligations secured by a Lien.

Debtor disputes Creditor's claims as to the amount debtor owes in monthly payments, late charges, and attorney's fees and costs. Nevertheless, should the claims prove true, Debtor requests that the Court enter an Adequate Protection Order based upon the following:

1. That the Debtor commences the regular monthly mortgage payments.
2. That the Debtor cures the monthly payment arrears over a six month period in equal installments.
3. That the Debtor be given a 15-day default letter should the Debtor default in payments.
4. Reasonable attorney's fees and costs.

11 U.S.C. § 362(d) governs motions to lift the automatic stay. It states that the stay shall not lift unless the party requesting relief can show (1) cause including a lack of adequate protection or (2) that the property involved does not have equity and the property is not necessary for an effective reorganization.

In this matter, the APO should protect the Creditor. Therefore, Debtors submit that the stay should not lift at this time.

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1 In the alternative, should the claims prove true, Debtor further requests that if the  
2 Creditor has already commenced foreclosure proceedings against Debtor's property by filing a  
3 Notice of Default or Notice of Breach with the County Recorder, that the Creditor be required to  
4 initiate the foreclosure process again by filing the Notice of Default or Notice of Breach anew.

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6 Dated this 20th day of November, 2009.

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8 /s/ Randal R. Leonard  
9 Randal R. Leonard, Esq.  
10 Nevada Bar No. 006716  
11 509 South Seventh Street  
12 Las Vegas, NV 89101  
13 (702) 598-3667  
14 Attorney for Debtor

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**CERTIFICATE OF SERVICE**

2  
I hereby certify that on the 20th day of November, 2009 I sent via electronic means and  
3  
first class mail, postage pre-paid, the foregoing **OPPOSITION TO MOTION FOR RELIEF**  
4  
**FROM STAY** to the following:

5 ***via electronic means:***

6 ecfmail@LasVegas13.com

7 Rick A. Yarnall

Chapter 13 Trustee

8 bk@wildelaw.com

9 Gregory L. Wilde

Attorney for Wells Fargo, N.A.

10 ***via first class mail, postage pre-paid:***

11 Wells Fargo Bank, N.A.

12 Attn: Bankruptcy Manager, Officer, Managing or General Agent

13 One Home Campus, MAC# X2302-045

Des Moines, IA 50328

15 /s/ Randal R. Leonard

16 Randal R. Leonard, Esq

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18 509 South Seventh Street

Las Vegas, NV 89101

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19 Attorney for Debtor(s)